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NO. 87-945

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

GREGORY TARALA,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIFTH DIVISION

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Appellate Court of Illinois correctly found that the trial court exercised proper judicial discretion in sentencing petitioner to five years for concealment of a homicidal death, even though the murderer received 3 years for the concealment of a homicidal death conviction, where petitioner was the main actor in the disposal of the victim's body.

TABLE OF CONTENTS

	Page
Question Presented.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
Opinion Below.....	1
Jurisdiction.....	2
Statement of the Case.....	3
Reason for Denying Writ.....	25
THE APPELLATE COURT OF ILLINOIS CORRECTLY FOUND THAT THE TRIAL COURT EXERCISED PROPER JUDICIAL DISCRETION IN SENTENCING PETITIONER TO FIVE YEARS FOR CONCEALMENT OF A HOMICIDAL DEATH, EVEN THOUGH THE MURDERER RECEIVED 3 YEARS FOR THE CONCEALMENT OF A HOMICIDAL DEATH CONVICTION, WHERE PETITIONER WAS THE MAIN ACTOR IN THE DISPOSAL OF THE VICTIM'S BODY.....	25
Conclusion.....	36

TABLE OF AUTHORITIES

	Page
Williams v. Illinois, 399 U.S. 244, 90 S. Ct. 2018 (1970).....	27
Wasman v. United States, 468 U.S. 559, 104 S. Ct. 3217 (1984).....	27
People v. LaPointe, 88 Ill. 2d 482, 431 N.E.2d 344 (1982).....	27
People v. Perruquet, 68 Ill. 2d 149, 368 N.E.2d 882 (1977).....	28
People v. Lambrechts, 69 Ill. 2d 544, 372 N.E.2d 641 (1977).....	28
People v. Morgan, 59 Ill. 2d 276, 319 N.E.2d 764 (1974).....	29
People v. Cox, 82 Ill. 2d 268, 412 N.E.2d 541 (1980).....	29
People v. Stanley, 146 Ill. App. 3d 912, 497 N.E.2d 496 (1st Dist. 1986)....	24
Enmund v. Florida, 458 U.S. 782, 102 S. Ct. 3368 (1982) (distinguished)..	34
Ill. Rev. Stat. 1983, ch. 38, sec. 9-3.1.....	26
Ill. Rev. Stat. 1983, ch. 38, sec. 1005-8-1(a)(6).....	26

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OPINION BELOW

The petitioner was convicted of concealment of a homicidal death in violation of Illinois Revised Statutes, 1983, ch. 38, sec. 9-3.1. Petitioner was sentenced to a five year term of imprisonment. The judgment and sentence of the Circuit Court were affirmed by the Illinois Appellate Court,

First Judicial District, Fifth Division, reported at 153 Ill. App. 3d 199, 505 N.E.2d 128 (1st Dist. 1987) and attached as an Appendix to petitioner's Petition for Writ of Certiorari. The Illinois Appellate Court subsequently denied petitioner's petition for rehearing in an order which is attached in the Appendix to petitioner's Petition for Writ of Certiorari. Petitioner's Petition for Leave to Appeal to the Illinois Supreme Court was denied on October 7, 1987.

JURISDICTION

Petitioner has filed a timely Petition for a Writ of Certiorari and this Court's jurisdiction has been properly invoked pursuant to 28 U.S.C. 1257(3).

STATEMENT OF THE CASE

On November 9, 1983, Thomas Stanley and Gregory Tarala (petitioner) were arrested and charged under Information No. 83-C-605473 with three counts of murder, one count of aggravated kidnapping, one count of unlawful restraint, and one count of concealment of a homicidal death. (R. C 157-162) These charges were based on the murder by strangulation of Laura Williams. (R. 157-162) Prior to trial, a motion for substitution of judges was brought by petitioner. (R. 17) This motion was granted and Stanley and petitioner were tried separately by different judges. (R. 18)

The case against petitioner proceeded to trial before Circuit Court Judge Frank Meekins on February 26, 1985. (R. 19) At trial, the People presented four

witnesses. The testimony of these witnesses established that the following events occurred.

On April 24, 1983, at approximately 7:30 p.m., Laura Williams, 15, was in her home at 3801 West 116th Place, in unincorporated Cook County, where she lived with her step father, Roy DiGuido, her mother, her brother and her sister. (R. 35) At 7:30 p.m., Thomas Stanley arrived at the Williams' home and remained there until 8:00 p.m. (R. 36) About 15 minutes after Stanley left, Laura Williams left her home and returned 15 minutes later. (R. 36-37) After remaining in her home for about 5 minutes, Laura left again, never again to be seen alive by her family. (R. 37)

At approximately 11:00 p.m., on April 24, 1983, Roy DiGuido, Laura's step father, called the Cook County Sheriff's

Police to report that his daughter Laura was missing. (R. 38) From April 24 until May 5, Roy DiGuido had approximately six conversations with petitioner as to the whereabouts of his daughter. (R. 39-40) On these occasions, petitioner stated that he had no knowledge or information concerning the location or health of Laura. (R. 41) Not until May 5, 1983, did Roy DiGuido discover the whereabouts of his daughter. (R. 38-39) At 9:30 p.m., on that day, he viewed her dead body in the morgue. (R. 39)

Earlier in the evening on May 5, 1983, the body of Laura Williams was found up against the south side of the Calumet City Channel in Blue Island, Illinois. (R. 50) Laura's body, which was found partially decomposed, was removed from the waterway and pronounced dead at St. Francis Hospital. (R.51)

On November 9, 1983, Cook County Assistant State's Attorney James Reilly interviewed petitioner. (R. 64) At that time, petitioner made a voluntary and signed statement as to his involvement in the murder of Laura Williams. (R. 68) Petitioner's statement recalled the following events.

On April 24, 1983, at approximately 9:00 p.m., in vicinity of 119th and Central Park, petitioner was driving his car and saw Thomas Stanley, his brother-in-law. (R. 75) Petitioner stopped to talk to Stanley, who told petitioner that "I (Stanley) think I did something I should not have." (R. 75) Stanley told petitioner that Stanley and Laura Williams had engaged in an argument which resulted in Stanley choking Laura, possibly to death. (R. C201) Stanley then took petitioner over to some bushes where petitioner saw "a female lying on her back

with her sweater or jacket open and her pants undone." (R. 76) After seeing the girl, who was later identified as Laura Williams, petitioner grabbed her by her coat and Stanley grabbed her by her feet, and they then put her in the backseat of petitioner's car. (R. 76) At this time, petitioner stated that he did not know if she was alive or dead. (R. 76) Not knowing of Laura's condition, petitioner attempted to revive her but did not get a response. (R. 77) After attempting to revive her, petitioner drove Stanley to a forest preserve located on Thornton Blue Island Road. (R. 77) Petitioner pulled onto the shoulder of the road, got out of the car, grabbed Laura by her coat while Stanley grabbed her by her feet, and proceeded to carry Laura into the woods. (R. 78) After going about 20 feet into the woods, petitioner told Stanley to

"do something with her," as petitioner returned to his car. (R. 78) Stanley later told petitioner that he brought Laura a few more feet and covered her up. (R. 79) The two then left the scene by car, and petitioner went to his mother-in-law's house after dropping Stanley off at the "Frosty Mug". (R. 79)

At approximately 1:00 a.m., petitioner picked up Stanley and returned to the woods where they had placed Laura's body. (R. 80) They returned to the woods in order to put Laura's body in the water because petitioner "figured someone would find her that way." (R. 81) When they arrived at the forest preserve, petitioner told Stanley to put Laura's body in the water, and Stanley returned shortly thereafter, having done so. (R. 81)

After presenting the evidence of petitioner's statement, the People presented a witness by way of stipulation. The stipulation concerned the testimony of Dr. Beamer, a Cook County Medical Examiner. He had performed an autopsy on Laura. (R. 87) As a result of the autopsy, he determined that the cause of death was by "asphyxiation consistent with drowning or choking. He could not rule out one more in favor of another." (R. 87)

At the close of the People's case, petitioner moved for a directed verdict on the three murder counts, the aggravated kidnapping count and the unlawful restraint count. (R. 97) The trial court entered a finding of not guilty on those counts. (R. 97) As to count six (the concealment count), petitioner did not make a motion, and rested. Each side waived closing arguments and the

court found petitioner guilty of concealment of a homicidal death. (R. 98)

On May 24, 1985, a sentencing hearing was held before Judge Meekins. In aggravation, the People presented the stipulated testimony of Chicago Police Officer J. Nolan. (R. 109) Officer Nolan testified that on January 1, 1985, the petitioner, while he was on bond for awaiting trial for the murder and the other charges in this case, was arrested and charged with gambling. The arrest grew out of the execution of a search warrant by Chicago Police Officers. (R. 108) In executing the warrant, the officers recovered gambling paraphernalia from the premises. (R. 110) Petitioner, who was on the premises at the time of the search, was searched and gambling wagers commingled with United States Currency were recovered from petitioner's wallet. (R.

109-111) In mitigation, the petitioner presented the testimony of Suzaenne Griffen, an aunt of Thomas Stanley, and Donna Stanley, who is Stanley's mother and petitioner's mother-in-law. Upon hearing this evidence in aggravation and mitigation, the court sentenced petitioner to 5 years imprisonment.

In making its decision, the trial judge "considered many factors in determining what a fair sentence is and attempt(ed) to strike a balance between the possible rehabilitative potential of a defendant and the debt of society for the offense which he committed." (R. 136) As to the factors in aggravation, the judge based his decision on the factors listed in Section 1005-5-3.2 of the Unified Code of Corrections. Ill. Rev. Stat. ch. 38, sec. 1005-5-3.2. (R. 136)

First, the judge considered whether the petitioner's conduct caused or threatened

serious harm. (R. 136) Examining this factor, the judge said, "there is no question in this Court's mind that that factor is overwhelmingly present in this case." The judge explained that this crime was very serious due to the petitioner's state of mind. (R. 138) The judge further emphasized his point by stating:

> Again in his statement to Assistant State's Attorney Reilly he mentioned that at the time they put the body in the car he did not know if she was dead or alive. It is not that unreasonable an inference that possibly he could have saved that young lady's life by taking her to a hospital or calling paramedics, or

whatever. It seems totally inconsistent to this Court -- And I acknowledge the fine argument made by Defense Counsel -- To believe that as a man who possesses remorse and compassion and concern in that if you believe he gave mouth to mouth resuscitation -- Because if you believe that, why wouldn't his first thoughts be of whatever he could do for that little girl to possibly save her life since he indicated he didn't know if she was dead or alive.

So the crime in that respect in this Court's opinion is more serious because of his state of mind

> than if he had been categorically guaranteed that Laura was dead at the time. (R. 138)

Second, the judge considered the prior delinquency or criminal behavior of the petitioner as a factor both in aggravation and mitigation. (R. 137) As to this factor, the judge stated that although petitioner had no prior criminal record, the judge did not believe that petitioner possessed rehabilitative potential because while he was out on bond for this murder case, the petitioner engaged in illegal conduct, namely gambling. (R. 109-111)

Third, the judge considered whether the sentence was necessary to deter others from committing the same crime. Concerning this factor, the judge stated,

Well in this Court's humble opinion there is no question that you have to impose a strict sentence to get a message to society that we cannot go around concealing homicidal deaths because despite what I have heard here today, common sense in this Court's opinion dictates that the motivation behind that factor is to isolate the individual who caused the death so that he shall never be apprehended for prosecution. And society cannot stand for potential murderers going loose because someone else is successful in

> isolating him. And people must learn that. (R. 137-138)

Fourth, the judge, noting the "reviewing court's attitudes towards victim impact," considered two aspects of victim impact in this case. (R. 139) The judge considered the impact of petitioner's actions on the victim, Laura Williams, and the impact of petitioner's actions on her parents. (R. 139) As to the impact of petitioner's acts on Laura, the judge stated, "Laura, a victim possibly road [sic] around in a car suffering beyond belief because she still had embers of life within her." (R. 139)

Finally, the judge commented on petitioner's claim of remorse and compassion. The judge rejected any belief that petitioner exhibited any of these qualities. The court stated:

As far as remorse and compassion, Mr. Aprati has argued that Mr. Tarala did everything he could to help the girl. I think that flies in the face of logic, and flies in the face of the testimony in this case.

He also said he did what he could do to mitigate his wrong. And I guess the only thing that stands for that proposition is that he put her in the water after they stuck her in the woods. And God knows I search my heart to find how that was mitigating, and I can't. (R. 140)

As to mitigation, the trial court considered the facts set forth in section 1005-5-3.1 of the Unified Code of Corrections. Ill. Rev. Stat., ch. 38, sec. 1005-5-3.1. (R. 140) The court found that factor one, that petitioner's criminal conduct neither caused or threatened serious physical harm to another, was not present. (R. 140) The court found that the factor two, that petitioner did not contemplate that his criminal conduct would cause or threaten serious physical harm to another, was not present. (R. 141) The court found that factor three, that petitioner acted under a strong provocation, was totally missing. (R. 142) Likewise, the court found that factor four, that there were grounds tending to excuse or justify the conduct, was not present. (R. 141) Additionally, the court found that factor five, that petitioner's

criminal conduct was induced or facilitated by someone other than the petitioner, was not present. (R. 141) Finally, the court found that there was a prior history of delinquency, noting that his comments in aggravation explained this factor. (R. 141)

As to the factor that petitioner's criminal conduct was the result of circumstances unlikely to reoccur, the court stated:

> I don't think that is present here. It isn't a question of a man panicking in this situation. It's a question in this Court's opinion of true malice aforethought once he discovered the body. He knowingly and intentionally did what he wanted to do. I

> think if faced with a similar situation -- If he did that to someone allegedly so close to him, why would he not do it again to someone not so close. The fact that he even engaged in criminal activity while out on bail on a murder case certainly indicates that apparently the law does not scare him that much. (R. 142)

As to petitioner's character and attitudes demonstrating his unlikeliness to commit another crime, the court commented that petitioner's two character witnesses were not completely credible. The court stated, "I would expect them to say nothing less than what they did. And I suppose I

respect them for that. But the weight to be given to that evidence is questionable." (R. 142)

Finally, the judge considered that the petitioner was eligible, under the statute, for probation. (R. 142) The judge noted that the "case law is quite clear that eligiblity for probation should be considered strongly by a court unless there is something that dictates strongly against it. To deny probation when probation is presumed eligible, the court must enter, or come to a finding that in fact to grant probation would totally deprecate the seriousness of the offense and be inconsistant with the ends of justice." (R. 142-143) In applying the law, the court stated:

> And unfortunately for Mr. Tarala, I find that that is

> 100 percent the case in this case; that this offense is very serious.
>
> So to send a message to the People of the State of Illinois that you can conceal a homicidal death and get probation would totally deprecate the seriousness of the offense. And I can in no manner see how it can ever be consistent with the ends of justice. (R. 143)

After explaining how he perceived all the factors and facts in aggravation and mitigation, the judge made his decision. The judge sentenced petitioner to a term of incarceration in the Illinois Department of

Corrections for 5 years.*

On May 24, 1985, petitioner filed his notice of appeal to the Appellate Court of Illinois, First Judicial District. On March 13, 1987, the Appellate Court of Illinois, First Judicial District, Fifth Division, affirmed defendant's sentence, with one justice dissenting. (See, Appendix to Petitioner's Petition at 1-22.) Petitioner's Petition for Rehearing was denied on April 10, 1987. (See, Appendix to Petitioner's Petition at 23). On October 7, 1987, petitioner's Petition for Leave to Appeal to the Supreme Court of Illinois was denied.

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*Thomas Stanley was found guilty of murder, aggravated kidnapping, concealment of a homicidal death and unlawful restraint. Stanley was sentenced to concurrent terms of 30 years for murder and 3 years for

(footnote continued)

concealment of a homicidal death. Stanley's and petitioner's cases were not heard before the same judge nor were they sentenced by the same judge. However, their convictions and sentences were both affirmed by the Fifth Division of the First Judicial District of the Illinois Appellate Court. People v. Stanley, 146 Ill. App. 3d 912, 497 N.E.2d 496 (1st Dist. 1986).

REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

THE APPELLATE COURT OF ILLINOIS CORRECTLY FOUND THAT THE TRIAL COURT EXERCISED PROPER JUDICIAL DISCRETION IN SENTENCING PETITIONER TO FIVE YEARS FOR CONCEALMENT OF A HOMICIDAL DEATH, EVEN THOUGH THE MURDERER RECEIVED 3 YEARS FOR THE CONCEALMENT OF A HOMICIDAL DEATH CONVICTION, WHERE PETITIONER WAS THE MAIN ACTOR IN THE DISPOSAL OF THE VICTIM'S BODY.

After his convictions were affirmed by the Illinois Appellate Court and his petition for leave to appeal was denied by the Illinois Supreme Court, petitioner filed the instant petition for a Writ of Certiorari. Herein, petitioner contends that in this case the Illinois Appellate Court

established the rule that "a less culpable person may receive a greater sentence for the same offense than the more culpable person for whose conduct petitioner was found accountable." (Petitioner's Petition at 14) The State of Illinois maintains that petitioner's interpretation of the facts in the case at hand is incorrect and maintains that the Illinois Appellate Court correctly found that the trial court exercised proper judicial discretion in sentencing defendant to five years imprisonment for concealment of a homicidal death.

In Illinois, concealment of a homicidal death is a Class 3 felony. Ill. Rev. Stat. 1983, ch. 38, sec. 9-3.1(c). A Class 3 felony is punishable by not less than 2 years and not more than 5 years imprisonment. Ill. Rev. Stat. 1983, ch. 38, sec. 1005-8-1(a)(6)

This Honorable Court has held that sentencing judges are vested with wide discretion in the exceedingly difficult task of determining the appropriate punishment in the countless variety of situations that appear. Williams v. Illinois, 399 U.S. 244, 90 S. Ct. 2018, 2023 (1970); Wasman v. United States, 468 U.S. 559, 104 S. Ct. 3217, 3220 (1984). The Constitution permits qualitative differences in meting out punishment and there is no requirement that two persons convicted of the same offense receive identical sentences. Williams v. Illinois, 399 U.S. 244, 90 S. Ct. 2018, 2023 (1970).

Furthermore, Illinois Courts have likewise long held that a trial court's decision with respect to sentencing is entitled to great deference and weight. People v. LaPointe, 88 Ill. 2d 482, 431 N.E.2d 344 (1982). It is a well settled

principle of law that absent an abuse of discretion by the trial court, a sentence may not be altered upon review. People v. Perruquet, 68 Ill. 2d 149, 368 N.E.2d 882 (1977). Such is the case due to the trial court's "superior position from which to determine an appropriate disposition." People v. Lambrechts, 69 Ill. 2d 544, 559, 372 N.E.2d 641, 649 (1977). Rather than having merely a "cold record" on appeal to base the imposition of its sentence, the trial court is afforded a better opportunity to consider the many factors from which an appropriate sentence may be deduced. People v. Perruquet, 68 Ill. 2d 149, 154, 368 N.E.2d 882, 884. Such factors include defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. Id. at 154. An additional and most important factor is the

seriousness of defendant's crime. People v. Morgan, 59 Ill. 2d 276, 319 N.E.2d 764 (1974). The trial court is faced with the difficult task of striking a balance between the protection of society and rehabilitation of the offender based on these factors. People v. Cox, 82 Ill. 2d 268, 412 N.E.2d 541 (1980).

In the case at hand, the trial court exercised proper judicial discretion when it sentenced petitioner to five years for concealment of a homicidal death. As the Appellate Court stated:

> Here, the trial court commented upon the circumstances surrounding the facts in this case and the impact upon the social environment in the community.

> Further, although the defendant had no prior record, the court could properly consider his arrest for gambling charges. We do not find that the sentence imposed was an abuse of discretion and therefore we will not disturb the sentence on appeal. (Cite omitted) People v. Tarala, 505 N.E.2d at 1286.

Clearly, the trial court extensively examined the record and, in exercising its discretion, determined that the five year sentence was appropriate. Such decision should be entitled to great deference and let to stand.

In his petition, petitioner now alleges that his sentence was not proper claiming that "(t)he rule of this case is

that petitioner, a less culpable person, may receive a greater sentence for the same offense than the more culpable person for whose conduct petitioner was found accountable.* (Petitioner's Petition at 4). However, the respondent maintains that based on a clear examination of the record, it is obvious that petitioner was the more culpable person and the principle actor, thus petitioner's claim to the contrary belies the record.

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*Petitioner did not raise the issue of disparate sentencing in his appeal to the Appellate Court of Illinois. Thus, respondent maintains that petitioner should be foreclosed from now raising it before this Honorable Court and his petition should be dismissed.

In the case at hand, the evidence presented clearly established that petitioner was more culpable than Thomas Stanley for the crime in which petitioner was convicted, that is, concealment of a homicidal death. Although Stanley murdered Laura Williams, petitioner was the main actor in the concealment and disposal of her body. The evidence established that when petitioner found that Stanley had strangled Laura during an argument, petitioner grabbed her by her coat and Stanley by her feet and put Laura in the backseat of petitioner's car. (R. 76) Petitioner then drove to a forest preserve, grabbed Laura by her coat, while Stanley grabbed her by her feet, and proceeded to carry her 20 feet into the woods. (R. 78) Although Stanley then carried Laura deeper into the woods, such act was done pursuant to petitioner's command to "do something with her." (R. 78)

The evidence also established that a 1:00 a.m. that morning, petitioner left his mother-in-law's house and drove Stanley to the woods where petitioner and Stanley had originally disposed of Laura's body. (R. 80) Petitioner and Stanley returned to the woods to put her (Laura) in the water since petitioner "figured someone would find her that way." (R. 81) Once at the woods, petitioner ordered Stanley "to take the body and put it in the water." (R. 81)

The evidence clearly showed that although Thomas Stanley strangled Laura Williams, petitioner was the main actor in the disposal of the body. Petitioner directed Stanley as to how the body should be disposed and Stanley followed petitioner's directions. Clearly petitioner's claim that petitioner only had a "peripheral involvement" in the crime is belied by the record.

Additionally, there is no evidence that petitioner was anything but the principal actor behind the disposing of Laura's body. There is nothing in the record that would indicate that the trial court found petitioner guilty of concealment of a homicidal death based on the theory of accountability. Thus, there is no merit to petitioner's claim that he was "found accountable for the conduct of Stanley" (Petitioner's petition at 6) and petitioner's reliance on this Court's decision in Enmund v. Florida, 458 U.S. 782, 102 S. Ct. 3368 (1982) is misplaced.

In sum, it is clear that the Appellate Court of Illinois correctly found that the trial court exercised proper judicial discretion in sentencing petitioner to five years imprisonment for concealment of a homicidal death. Petitioner's claim that

such sentence was not proper since Thomas Stanley, the murderer, only received a sentence of three years imprisonment for the concealment offense is meritless since petitioner was clearly more accountable in the disposal of the victim's body. Thus, petitioner's petition for a Writ of Certiorari should be denied.

CONCLUSION

For the foregoing reasons, Respondent respectfully prays that this Honorable Court deny the instant petition for Writ of Certiorari.

Respectfully submitted,

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